

ORDINANCE NO. 1488

AN ORDINANCE OF THE LODI CITY COUNCIL  
REGULATING PROHIBITING SMOKING IN CERTAIN PUBLIC PLACES  
AND IN PLACES OF EMPLOYMENT

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BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION I. Lodi Municipal Code Title 8 - Health and Safety - is hereby amended by adding a new Chapter 8.16 regarding the regulation of smoking, as follows:

- SEC. 8.16.010 Title.
- SEC. 8.16.020 Findings and Purpose
- SEC. 8.16.030 Definitions
- SEC. 8.16.040 Prohibition of Smoking in Public Places
- SEC. 8.16.050 Regulation of Smoking in Places of Employment
- SEC. 8.16.060 Where Smoking Not Regulated
- SEC. 8.16.070 Posting of Signs
- SEC. 8.16.080 Enforcement
- SEC. 8.16.090 Violations and Penalties
- SEC. 8.16.100 Non-retaliation
- SEC. 8.16.110 Governmental Agency Cooperation
- SEC. 8.16.120 Other Applicable Laws
- SEC. 8.16.130 Severability
- SEC. 8.16.140 Effective Date

Sec. 8.16.010 TITLE.

This chapter shall be known as the Smoking Pollution Control Ordinance.

Sec. 8.16.020 FINDINGS AND PURPOSE.

The Lodi City Council hereby finds that:

Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution; and

Reliable studies have shown that breathing second-hand smoke *is* a significant health hazard for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function, including asthmatics and those with obstructive airway disease; and

Health hazards induced by breathing second-hand smoke include lung cancer, respiratory infection, decreased exercise tolerance, decreased respiratory function, bronchoconstriction, and broncho-spasm; and

Nonsmokers with allergies, respiratory diseases **and** those who suffer other **ill** effects of breathing second-hand smoke **may** experience a loss of job productivity or may be forced to take periodic sick **leave** because of adverse reactions to same; and

Numerous studies have shown that a majority of both nonsmokers and smokers desire to have restrictions on smoking on public places and places of employment.

Smoking is a documented cause of fires; and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic losses to businesses.

Accordingly, the City Council finds and declares that the purposes of this ordinance are 1) to protect the public health and welfare by prohibiting smoking in specified public places by regulating smoking in places of employment; and 2) to strike a reasonable balance between the needs of smokers and the need of nonsmokers to breathe smoke-free air, and to recognize that, where these needs conflict, the need to breathe smoke-free air shall have priority.

Sec. 8.16.030 DEFINITIONS.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

1. "Bar" means an area which is devoted to the serving of alcoholic beverages and in which the service of food is only incidental to the consumption of such beverages.
2. "Business" means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes, including retail establishments where goods or services are sold as well as professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

3. "Dining Area" means any enclosed area containing a counter or tables upon which meals are served.
4. "Employee" means any person who is employed by any employer in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a nonprofit entity.
5. "Employer" means any person, partnership, corporation, or nonprofit entity, including a municipal corporation, who employs the services of one **or more** persons.
6. "Enclosed" means closed in by roof and four walls with appropriate openings for ingress and egress.
7. "Nonprofit Entity" means any corporation, unincorporated association, or other entity created for charitable, educational, political, social, or other similar purposes, the net proceeds from the operations of which are committed to the promotion of **the** objects or purposes of the organization and not to private financial gain. A public agency is not a "nonprofit entity" within the meaning of this section.
8. "Place of Employment" means any enclosed area under the control of a public or private employer which employees normally frequent during the course of employment, including but not limited to, work areas, employee lounges, and

restrooms, conference and class rooms, cafeterias" and hallways. Except:

a. A private residence is not a place of employment, unless it is used as a child care or a health care facility.

9. "Public Place" means any enclosed area to which the public is invited or in which the public is permitted, including, but not limited to: banks, educational facilities, health facilities, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms.

10. "Restaurant" means any coffee shop, cafeteria, tavern, sandwich stand, soda fountain, private or public school cafeteria, and any other eating establishment, organization, club, boardinghouse, or guesthouse, which gives or offers food for sale to the public, guests, patrons, or employees, except that the term "restaurant" shall not include a cocktail lounge or tavern if said cocktail lounge or tavern is a "bar" as defined in Section S.16.030 (1).

11. "Retail Tobacco Store" means a retail store utilized primarily for the sale of tobacco products and accessories.
12. "Service Line" means any indoor line at which one or more persons are waiting for or receiving service of any kind, whether or not such service includes the exchange of money.
13. "Smoking" means inhaling, exhaling, burning, or carrying any lighted pipe, cigar, or cigarette of any kind.
14. "Sports Arena" means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys and other similar places where members of the public assemble to engage in physical exercise, participate in athletic competition, or witness sports events.

Sec. 8.16.040 PROHIBITION OF SMOKING IN PUBLIC PLACES.

- A. Smoking shall be prohibited in all enclosed public places within the City, including, but not limited to the following places:
  1. Elevators and restrooms.
  2. Buses, taxicabs and other means of public transit under the authority of the City, and in ticket, boarding, and waiting areas of public transit depots.
  3. Service lines

4. Retail stores, except areas in said stores not open to the public and all areas within retail tobacco stores.
5. Retail food marketing establishments, including grocery stores and supermarkets, except those areas not open to the public, which may be otherwise regulated by this chapter.
6. All areas available to and customarily used by the general public in all businesses and nonprofit entities patronized by the public, including, but not limited to, business offices, banks, hotels and motels.
7. Restaurants.
8. Any building not open to the sky which is used primarily as a museum or for exhibiting any motion picture, stage drama, lecture, musical recital or other similar performance, except when smoking is part of any such production.
9. Enclosed sports arenas and convention halls.
10. Every room, chamber, and place of meeting or public assembly, including school buildings under the control of any board, council, commission, committee, or agencies of the City or any political subdivision of the State during such time as a public meeting is in progress, to the extent such place is subject to the jurisdiction of the City.

11. Doctors' offices, dentists' offices, waiting rooms, hallways, wards, and semi-private rooms of health facilities, including, but not limited to, hospitals, clinics, and physical therapy facilities. In bed space areas of health facilities used for two or more patients, smoking shall be prohibited unless all patients within the room are smokers and request in writing upon the health care facility's admission forms to be placed in a room where smoking is permitted.

12. Polling Places.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment described in this section may declare that entire establishment as a nonsmoking establishment. Further, provided that notwithstanding this chapter, the owner or person who controls such establishment may, but is not required to set aside in any facility described in this section, a separate room with walls and doors reasonably impermeable to tobacco smoke for use as an employee lounge or break room.



Sec. 8.16.050 REGULATION OF SMOKING IN PLACES OF EMPLOYMENT.

- A. It shall be the responsibility of employers to provide smoke-free areas for nonsmoking employees within existing facilities to the maximum extent possible, but employers are not required to incur any expense to make structural or other physical modifications in providing these areas.
- B. Within 60 days of the effective date of this chapter, each employer and each place of employment located within the City shall adopt, implement, make known and maintain a written smoking policy, which shall contain at a minimum the following requirements:
1. Any employee in a place of employment shall have the right to designate his or her work area as a nonsmoking area and to post the same with an appropriate sign or signs, to be provided by the employer.
  2. Prohibition of smoking in auditoriums, classrooms, conference and meeting rooms, elevators, hallways, medical facilities, and restrooms.
  3. Provision and maintenance of separate and contiguous nonsmoking areas of not less than fifty percent of the seating capacity and floor space in cafeterias, lunchrooms and employee lounges or provision and maintenance of separate and equal-sized cafeterias, lunchroom and employee lounges for smokers and nonsmokers.

4. In any dispute arising under this smoking policy, the health concerns of the nonsmoker shall be given precedence.
- C. The smoking policy shall be communicated to all employees within three weeks of its adoption.
- D. All employers shall supply a written copy of the smoking policy to any prospective employee.
- E. Notwithstanding any other provisions of this section, every employer shall have the right to designate any place of employment, or any portion thereof, as a nonsmoking area.

Sec. 8.16.060 WHERE SMOKING NOT REGULATED.

- A. Notwithstanding any other provisions of this Ordinance to the contrary, the following areas shall not be subject to the smoking restrictions of this chapter:
  1. Bars.
  2. Private residences, except when used as a child care or a health care facility.
  3. Hotel and motel rooms rented to guests.
  4. Retail tobacco stores.

5. Restaurant, hotel and motel conference or meeting rooms, and public and private assembly rooms while these places are being used for private functions.
  6. A private enclosed place occupied exclusively by smokers, even though such a place may be visited by nonsmokers.
- B. Notwithstanding any other provision of this section, any owner, operator, manager, or other person who controls any establishment described in this section may declare that entire establishment, or any portion thereof, as a nonsmoking establishment.

Sec. 8.16.070 POSTING OF SIGNS.

- A. "Smoking" or "No Smoking" signs, whichever are appropriate, with letters of not less than 1" in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently **and** conspicuously posted in every building or other place where smoking is controlled by this chapter, by the owner, operator, manager or other person having control of such building or other place.
- B. Every theater owner, manager or operator shall conspicuously post signs in the lobby stating that smoking is prohibited within the

theater or auditorium, and in the case of motion picture theaters, such information shall be shown upon the screen for at least five seconds prior to the showing of each feature motion picture.

Sec. 8.16.080 ENFORCEMENT.

- A. Enforcement shall be implemented by the Fire Marshal.
- B. Any citizen who desires to register a complaint hereunder may initiate enforcement with the Fire Marshal.
- C. Any owner, manager, operator or employer of any establishment controlled by this chapter shall have the right to inform persons violating this chapter of the appropriate provisions thereof.
- D. Notwithstanding any other provisions of this chapter, a private citizen may bring legal action to enforce this chapter.

Sec. 8.16.000 VIOLATIONS AND PENALTIES.

- A. It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the regulation under this chapter to fail to comply with its provisions.

B. It shall be unlawful for any person to smoke in any area restricted by the provisions of this chapter.

C. Any person who violates any provision of this chapter shall be guilty of an infraction, punishable by:

1. A fine, not Exceeding \$100, for first violation;
2. A fine, not exceeding \$200, for a second violation of this chapter within 1 year;
3. A fine, not exceeding \$500, for each additional violation of this chapter within 1 year;

Sec. 8.16.100 NON-RETALIATION.

No person or employer shall discharge, refuse to hire, or in any manner, retaliate against any employee or applicant for employment because such employee or applicant exercises any rights afforded by this chapter.

Sec. 8.16.110 GOVERNMENTAL AGENCY COOPERATION.

The City Manager shall annually request other governmental and educational agencies having facilities within the City to establish local operating procedures in cooperation and compliance with this chapter. The City Manager shall urge Federal, State, County and special school district agencies to enforce their existing smoking

control regulations and to comply voluntarily with this chapter. "

Sec. 8,16,120 OTHER APPLICABLE LAWS.

This chapter shall not **be** interpreted or construed to, permit smoking where it is otherwise restricted by other applicable laws'.

Sec. 8,16,130 SEVERABILITY.

If any provision **or** clause of this Ordinance or the application thereof *to* any person or circumstances held to be unconstitutional or to be otherwise invalid by any court of competent jurisdiction, such invalidity shall not affect other Ordinance provisions or clauses or applications thereof which can be implemented without the invalid provision or clause or application, and to this end the provisions and clauses of this Ordinance are declared to be severable.

Sec. 8.16.140 EFFECTIVE DATE.

This chapter shall be in force and take effect thirty (30) days from and after its passage and approval.

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi.

Approved this 6th day of June 1990



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JOHN R. SNIDER  
Mayor of the City of Lodi

Attest:



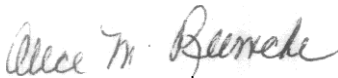
ALICE M. REIMCHE  
City Clerk of the City of Lodi

=====  
State of California  
County of San Joaquin, ss.


I, Alice M. Reimche, City Clerk of the City of Lodi, do hereby certify that Ordinance No. 1488 **was** introduced at a regular meeting of the City Council of the City of Lodi held May 16, 1990 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held June 6, 1990 by the following vote:

**Ayes:** Council Members - Hinchman, Olson, Reid, and Snider (Mayor)  
**Noes:** Council Members - Pinkerton  
**Absent:** Council Members - None  
**Abstain:** Council Members - None

I further certify that Ordinance No. 1488 **was** approved **and** signed by the Mayor on the date of its passage and the same has been published: pursuant to law.

  
ALICE M. REIMCHE  
City Clerk of the City of Lodi

Approved as to Form

  
BOBBY W. McNATT  
City Attorney of the City of Lodi

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